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IS THERE A REMEDY TO SEX DISCRIMINATION IN MAQUILADORAS?

Corey Tanner-Rosati*

"Every major international human rights instrument, beginning with the United Nations Charter, prohibits discrimination on the basis of sex."¹

I. INTRODUCTION

MANY women workers in maquiladoras, foreign owned factories operated in Mexico, experience sex discrimination on a daily basis. These women are often poor, uneducated, and have little recourse against perpetrators of sex discrimination in the work place. But domestic laws and international human rights instruments purport to provide protection against this kind of employment discrimination. Why is it that these laws are not being enforced? What can concerned citizens do to ensure that the rights of women are not ignored by the Mexican government and the international community?

Mexico is certainly not the only country in the world that discriminates against women in the work place, but this discussion will focus on Mexico exclusively. This article will discuss the traditional political and social roles of men and women in Mexican society and how those roles operate in the work environment in maquiladoras. Next, it will explore the problems faced by women who work in these factories, including sexual harassment and pregnancy discrimination. This comment will then discuss the relevant domestic law, regional treaties, and international treaties that obligate the Mexican government to take action against employment discrimination and show how Mexico has repeatedly failed to meet these obligations. Finally, this comment will suggest possible remedies to the sex discrimination policies in maquiladoras, including placing international pressure on the Mexican government to pass new laws to conform to their obligations, initiating litigation under relevant laws and treaties, promoting advocacy groups for women, and demanding corporate responsibility from companies who own factories.

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1. Rebecca Adams, *Violence Against Women and International Law: The Fundamental Right to State Protection from Domestic Violence*, 20 N.Y. INT'L L. REV. 57, 107-08 (2007).

But before one can consider the worth and reasonability of these solutions, it is important to understand the roles of women in Mexican political and social spheres, how maquiladoras came into existence, and what the maquiladoras' continued growth has meant for the women of Mexico.

II. WOMEN'S POLITICAL ROLES IN MEXICO

Women in Mexico won the suffrage movement in 1953, and feminist social and political groups began to form in the 1970s and 1980s.² Women joined together to create momentum for popular movements in urban communities that demanded basic social services like electricity and education.³ Lower-class women were the primary instigators of most of these movements.⁴ Eventually, women from higher social classes took an interest in these issues and organized to form non-governmental organizations (NGOs) that could lobby for these and other rights.⁵ With time, the NGOs took up other women's issues including domestic violence and sexual discrimination.⁶

Throughout the 1970s and 1980s these groups grew both in size and strength, but the Institutional Revolutionary Party (PRI), a political party which remained in power until 1980, did not provide for input from citizens, so the rights of women were largely ignored until PRI lost political power.⁷ After the national elections in 1988, PRI lost its majority in the Mexican Congress.⁸ Because the National Action Party (PAN) and the Party of the Democratic Revolution (PRD) had to compete for votes, women's groups were finally given an opportunity to gain political power.⁹ With these developments, women were given a louder voice in the Mexican political system, but despite these great strides their role today remains marginal at best. Part of the problem for women in garnering political power has been that women's roles in Mexican social life has largely remained the same despite the passage of time.

III. GENDER ROLES IN MEXICO

Traditionalized roles of men and women still largely exist in Mexico.¹⁰ Most of these roles are based on concepts of *machismo* and *marianismo*.¹¹ *Machismo* dictates that men are superior to women, and *marian-*

2. Mary C. Wagner, *Belem Do Para: Moving Toward Eradicating Domestic Violence in Mexico*, 22 PENN. ST. INT'L L. REV. 349, 354 (2003).

3. *Id.*

4. *Id.*

5. *Id.* at 354-55.

6. *Id.*

7. *Id.* at 354.

8. Wagner, *supra* note 2, at 354.

9. *Id.*

10. Elizabeth Goergen, *Women Workers in Mexico: Using the International Human Rights Framework to Achieve Labor Protection*, 39 GEO. J. INT'L L. 407, 409 (2008).

11. Wagner, *supra* note 2, at 351.

ismo draws parallels between the Virgin Mary and women's purity.¹² Based on these roles, men are expected to be dominant providers whereas women are seen as the submissive caretakers.¹³ Men are expected to dominate the public sphere while women are relegated to the internal functions of the home and family.¹⁴

These ideas about women's roles have remained fairly stagnant despite the fact that more and more women are joining the workforce in Mexico.¹⁵ Women are still expected to take care of home and family matters, even as the prevalence of globalization and free trade have encouraged, and to some extent forced, women to leave traditional jobs close to home.¹⁶ In the past, women were mostly employed in agricultural work in their communities, but today women have largely moved into positions within manufacturing and services.¹⁷ Part of the shift is attributable to imports of subsidized foods from the United States as a part of the North American Free Trade Agreement (NAFTA).¹⁸ Imported food products resulted in a decreased need for local production, and thus fewer positions in the agricultural sector needed to be filled.¹⁹ As a result of the decrease in demand for home grown food and the growing prevalence of factories in Mexico, many of the women formerly employed in the agricultural industry moved to jobs in maquiladoras.²⁰

IV. WHAT ARE MAQUILADORAS?

Maquiladoras are factories owned by corporations in foreign countries.²¹ Workers in these factories assemble products to be shipped back to the nation where the company is based.²² The use of maquiladoras for assembling products allows these companies to take advantage of low wage labor and reduce production costs overall.²³

Maquiladoras are set up to result in the highest possible level of output.²⁴ In the United States, factories typically adhere to the forty hour work week.²⁵ But maquiladoras usually extend this work week by five to

12. Adrienne Speas, *Sexual Harassment in Mexico: Is NAFTA Enough?*, 12 L. & Bus. REV. AM. 83, 86 (2006).

13. Goergen, *supra* note 10.

14. Nicole L. Grimm, *The North American Agreement on Labor Cooperation and its Effects on Women Working in Mexican Maquiladoras*, 48 AM. U. L. REV. 179, 186 (1998).

15. Goergen, *supra* note 10, at 411.

16. *Id.* at 409-10.

17. *Id.*

18. *Id.* at 410.

19. *Id.*

20. *Id.*

21. Grimm, *supra* note 14, at 182.

22. *Id.*

23. *Id.*

24. Elvia Arriola, *Accountability for Murder in the Maquiladoras: Linking Corporate Indifference to Gender Violence at the U.S.-Mexico Border*, 5 SEATTLE J. FOR SOC. JUST. 603, 617 (2007).

25. *Id.*

ten additional hours per employee, without overtime compensation.²⁶ The expectation of high production has led to the creation of a corporate culture that tends to ignore the problems inherent in forcing workers to work six day weeks and endure ten or twelve hour shifts.²⁷

Maquiladoras are not a phenomena created by NAFTA, although their construction and operation has increased greatly since the passage of the treaty.²⁸ Maquiladoras were first established when the United States and Mexico agreed on the Border Industrialization Program in 1964.²⁹ The Border Industrialization Program aimed to develop industry and promote employment along the U.S.-Mexico border.³⁰ It created trade conditions that were favorable to large U.S. corporations and was instrumental in encouraging the development of factories along the U.S.-Mexican border and throughout Mexico.³¹

Today as many as seventy percent of maquiladoras are located along the Texas border in the state of Chihuahua.³² Since the North American Free Trade Agreement was signed the number of Mexican citizens working in maquiladoras has surged.³³ In just three years, between 1996 and 1999, foreign owned factories in Mexico increased by thirty-seven percent, and overall employment of Mexican workers grew by fifty percent.³⁴ Today maquiladoras make up an essential part of the overall Mexican economy, accounting for thirty-one billion dollars per year in exports.³⁵

V. GENDER ROLES IN MAQUILADORAS

The increase in maquiladora operations has given many women the opportunity to work outside the home, earn money, and support themselves financially.³⁶ Fulfilling an important role outside of the home has allowed women greater visibility in the outer realm of business and contributed to the empowerment of both individual women and larger women's groups.³⁷ But though maquiladoras offer women a degree of indepen-

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. Arriola, *supra* note 24.

31. *Id.*

32. United Nations Convention on the Elimination of All Forms of Discrimination Against Women, Comm. On the Elimination of Discrimination Against Women, *Report on Mexico Produced by the Committee on the Elimination of Discrimination Against Women under Article 8 of the Optional Protocol to the Convention, and Reply from the Government of Mexico*, U.N. Doc. CEDAW/C/OP.8/Mexico at 49 (January 27, 2005).

33. NAALC Secretariat of The Commission for Labor Cooperation, *North American Labor Markets: Main Changes Since NAFTA*, 69, 2003, available at http://www.naalc.org/english/pdf/labor_markets_en_1.pdf.

34. *Id.* at 81.

35. Harry F. Chaveriat III, *Mexican Maquiladoras and Women: Mexico's Continued Willingness to Look the Other Way*, 8 NEW ENG. INT'L & COMP. L. ANN. 333, 338 (2002).

36. Grimm, *supra* note 14, at 204.

37. *Id.*

dence and the potential for increased self-confidence, maquiladoras usually reflect the overall stereotypes about men and women in Mexican society.³⁸

Men generally hold most supervisory and management positions, while women are normally placed in jobs that earn lower pay and come with less respect and poorer working conditions.³⁹ Many factories attempt to justify these hiring decisions based on assumptions that women are secondary wage earners, merely supplementing the wages earned by their husbands.⁴⁰ But it is not a given that female workers are merely supplementing income since many are actually providing for themselves or their families without the aid of a working spouse.⁴¹

Many maquiladora owners and managers also hire based on stereotypes about skills or behaviors.⁴² For example, managers might assume that women would be better at assembling products because of greater dexterity stemming from their smaller hands and because of their experience sewing in the home.⁴³ But men are just as efficient and effective as women in performing tasks that require careful handling and intricate assembly.⁴⁴

Another gender stereotype that contributes to hiring decisions is the idea that women are more agreeable and docile than their male counterparts.⁴⁵ Although women are less likely to organize in unions or complain about working conditions, their complacency is not caused by their sex.⁴⁶ Rather, women are less likely to organize because after their shifts they are still expected to perform their duties at home and are too busy or too tired to participate in unions.⁴⁷ Additionally, Mexican women who do not have families or financial support from husbands are often less inclined to join unions or speak out about poor working conditions out of fear that their only source of income will be lost if they anger employers by petitioning for better treatment.⁴⁸

The sum of these stereotypes creates the perfect maquiladora worker in the minds of maquiladora owners: docile, passive women who are submissive, easy to train, and highly unlikely to cause problems by organizing to protest unfair treatment.⁴⁹ These stereotypes are ever present in maquiladoras and their perpetuation unquestionably contributes to sex discrimination against women.

38. *Id.*

39. *Id.*

40. *Id.* at 205.

41. *Id.*

42. Grimm, *supra* note 14, at 206.

43. *E.g., id.*; Arriola, *supra* note 24, at 610.

44. Grimm, *supra* note 14, at 207.

45. Arriola, *supra* note 24, at 610-11.

46. Grimm, *supra* note 14, at 208.

47. *Id.*

48. *Id.*

49. Arriola, *supra* note 24 at 610-611.

VI. SEX DISCRIMINATION AGAINST WOMEN WORKING IN MAQUILADORAS

Most of the workers in maquiladoras are women.⁵⁰ These women work long hours, earn very low wages, work in unsafe conditions, and have few advocates.⁵¹ Many of them endure sexual harassment and pregnancy discrimination on a regular basis.⁵²

A. SEXUAL HARASSMENT

Sexual harassment is rampant within many of Mexico's maquiladoras.⁵³ It humiliates women and often forces them to quit jobs they desperately need to support their families.⁵⁴ Sexual harassment is generally viewed as either a kind of discrimination or a form of violence against women.⁵⁵ A Mexican government organization, the National Institute of Women, has identified three distinct components of sexual harassment:

- (1) Non-reciprocal sexual advances, which are repetitive unwelcome and premeditated actions that "pursue a sexual interchange."⁵⁶
- (2) Sexual coercion which "'refers to the intention to cause some form of prejudice or give a benefit to someone who rejects or accepts the proposed sexual actions;" such behavior is asymmetrical.⁵⁷
- (3) Displeasure inducing "'humiliation, personal dissatisfaction, annoyance or depression'" that results from non-reciprocal sexual advances.⁵⁸

The International Labor Organization estimates that four of ten women who quit their jobs in maquiladoras do so because of experiences with sexual harassment and, additionally, that sexual harassment is also a motive behind one in four firings.⁵⁹ In fact, in a study of 160 female maquiladora workers, forty-seven percent had either experienced sexual harassment themselves or seen someone else be victimized by it.⁶⁰ It is likely that the prevalence of sexual harassment is even greater, and that many instances remain unreported because of feelings of shame and a lack of knowledge regarding women's rights.⁶¹

Sexual harassment is often used as a tool to control women and pre-

50. Grimm, *supra* note 14 at 183.

51. *Id.*

52. *Id.*

53. Goergen, *supra* note 10, at 413.

54. *Id.*

55. Speas, *supra* note 12, at 85.

56. Instituto Nacional de las Mujeres, *Las Mexicanas y el Trabajo III* 14, Sept. 2004, available at http://cedoc.inmujeres.gob.mx/documentos_download/100514.pdf.

57. *Id.* at 6.

58. *Id.*

59. *Id.* at 3.

60. Speas, *supra* note 12, at 85.

61. Goergen, *supra* note 10, at 413. ("Many respondents were surprised to learn that some behaviors they had always encountered in their places of work were considered sexual harassment, and that they could take action against it.").

vent them from forming labor unions.⁶² Maquiladora supervisors use techniques to manipulate young female workers by flirting and encouraging competition among the women for managerial affection.⁶³ Supervisors try to generate feelings of loyalty in these women and encourage them to report any organizational activity immediately so that management can stop it before any union can garner much support.⁶⁴ Maquiladora companies also host parties, dinners, dances, and beauty pageants.⁶⁵ Women who attend are encouraged to give in to sexual advances from supervisors and are rewarded with job benefits like additional pay and vacation days.⁶⁶

Sexual harassment can have various adverse effects on female employees in maquiladoras. Those who are sexually harassed experience "stress, lack of self confidence, frustration, [and] lack of motivation."⁶⁷ Victims also find it hard to concentrate and are more likely to be the cause of accidents or injuries.⁶⁸ They also tend to miss work as a result of the trauma they suffer.⁶⁹

Sexual harassment may allow maquiladora managers to exert a degree of control over these women, but the continued practice of sexual harassment in the workplace can also have negative consequences for the maquiladoras themselves. Women who are continually sexually harassed may eventually quit, costing the factory time and money to train new employees. If workers experience lack of motivation or have trouble concentrating as a result of sexual harassment, there can be an overall decrease in productivity and higher incidents of worker injuries and product defects.⁷⁰ There is also the possibility that the company will garner negative publicity as a result of sexual harassment, thus risking a loss of profits and public support.⁷¹

B. PREGNANCY TESTING AND DISCRIMINATION AGAINST PREGNANT WOMEN

In addition to engaging in sexual harassment, many maquiladoras practice pregnancy discrimination as well. These factories force prospective female employees to take pregnancy tests and demand that women answer personal questions regarding their "menstrual cycles, sexual activity,

62. Speas, *supra* note 12, at 86.

63. *Id.* at 87. ("One technique involves supervisors flirting with the women in a way that encourages them to compete for the affection of the supervisors. If the women later complain about job conditions, they are told that arguing is unladylike and unattractive.")

64. *Id.*

65. *Id.* at 86.

66. *Id.* at 87.

67. Goergen, *supra* note 10, at 413.

68. *Id.*

69. *Id.*

70. *E.g., id.*; Speas, *supra* note 12, at 88.

71. *E.g.,* Goergen, *supra* note 10, at 413; Speas, *supra* note 4, at 88.

and use of birth control.”⁷²

If a maquiladora worker is found to be pregnant after she is hired, she is frequently subjected to abuse and discrimination.⁷³ Employers are obligated by law to provide benefits for pregnant women, so there is a clear incentive for them to encourage pregnant women to quit their jobs voluntarily.⁷⁴ Employers resort to giving pregnant women work that forces them to stand throughout a full shift or lift heavy objects all day long.⁷⁵ Major American companies such as General Motors and Zenith Electronics have admitted to the use of such techniques in their factories.⁷⁶

Women in maquiladoras frequently handle chemicals without any safety training or protective gear, thus those who are pregnant risk compromising the health and safety of their developing babies.⁷⁷ Women who keep their jobs often have miscarriages or deliver babies with birth defects as a result of their working conditions.⁷⁸ When these women are injured, anecdotal evidence suggests that employers deny work-related injuries in order to avoid qualifying their employees for government disability programs.⁷⁹ In fact, many maquiladoras use in-house doctors who minimize the seriousness of health conditions or suggest questionable methods of treatment in order to prevent the parent companies from incurring liability or being penalized under occupational hazard laws.⁸⁰

Pregnancy discrimination was not seriously scrutinized until 1996 when Human Rights Watch investigated allegations of the practice.⁸¹ The next year, a U.S. government organization received a petition that alleged pregnancy discrimination and violation of international treaties in maqui-

72. Human Rights Watch, *Submission Concerning Pregnancy Based Sex Discrimination in Mexico's Maquiladora Sector to the United States National Administrative Office*, US NAO Publication Submission No. 9701 (May 15, 1997); Grimm, *supra* note 14, at 201-02.

73. Goergen, *supra* note 10, at 414.

74. *Id.* at 415.

75. Human Rights Watch, *supra* note 72.

76. Goergen, *supra* note 10, at 415. (“One particularly egregious case of pregnancy discrimination was reported by Human Rights Watch. In that case, a pregnant woman was responsible for packing hangers in to seventy-five to ninety boxes per shift, and putting the boxes on a conveyor belt. She requested to be reassigned to seated work, but was denied. One day, she started bleeding soon after she began her shift. The shift supervisor refused to let her leave to go to the hospital. By the time her shift ended and she was able to seek medical attention, she had hemorrhaged so much that she suffered a miscarriage.”).

77. Grimm, *supra* note 14, at 209.

78. *Id.*

79. Arriola, *supra* note 24, at 615.

80. *Id.* (“On one occasion, an in house medic denied that it was the chemicals in a particular pant fabric that had caused [female employee] an upper body rash. On another occasion, she cut her finger on a machine, a frequent problem for workers because it was on a ‘speed up’—a setting used by managers to increase a machine’s output to pressure workers to maintain a specific, hurried pace. That time. . . [a medic] suggested the easy remedy of amputating her finger when she complained the wound was not healing properly.”).

81. Natará Williams, *Pre-Hire Pregnancy Screening in Mexico's Maquiladoras: Is it Discrimination?*, 12 DUKE J. GENDER L. & POL’Y 131, 132 (2005).

ladoras throughout Mexico.⁸² The organization's 1998 official report concluded that pre-hiring pregnancy screening was commonplace in Mexico but that such screening did not explicitly violate Mexican law.⁸³ The international attention put pressure on the Mexican government to prevent discrimination, and the government did pass a law in 2003 that seems to prohibit pregnancy discrimination in pre-hiring settings, but pregnancy discrimination continues to remain a common practice in maquiladoras.⁸⁴

While there is some question as to whether pregnancy discrimination is prohibited by Mexican laws,⁸⁵ all forms of sex discrimination are unquestionably prohibited by several treaties Mexico has signed including the International Covenant on Civil and Political Rights (ICCPR), The Convention to Eliminate All Forms of Discrimination Against Women (CEDAW), the American Convention on Human Rights (ACHR), and the International Labor Organization's Convention 111.⁸⁶

VII. CURRENT LAWS AND TREATIES THAT PROTECT WOMEN WORKERS IN MAQUILADORAS

A. MEXICAN LEGISLATION

The Mexican government has acknowledged that sexual harassment constitutes a violation of human and civil rights.⁸⁷ It has also recognized that sex discrimination goes against the values set forth in the Mexican Constitution.⁸⁸ Article One of the Mexican Constitution states that "'All discrimination motivated by . . . gender . . . that may attempt to go against human dignity and have as its objective to restrict or diminish the rights and liberties of persons is prohibited.'" ⁸⁹

In 2001 the Mexican government amended the Constitution in an attempt to safeguard women's rights.⁹⁰ Article Five of the Constitution now recognizes a right to work, and if this article is read together with the

82. *Id.* at 133.

83. Emily Miyamoto Faber, *Pregnancy Discrimination in Latin America: The Exclusion of "Employment Discrimination" From the Definition of "Labor Laws" in the Central American Free Trade Agreement*, 16 COLUM. J. GENDER & L. 297, 307 (2007). ("In its official report, released on January 12, 1998, the U.S. NAO concluded that pre-hire pregnancy screening occurred in the Mexican maquiladora industry. In response the Mexican NAO conceded that Mexican law prohibits post-hire pregnancy discrimination, but distinguished this from discrimination during the pre-hire period, stating that there is not explicit prohibition in Mexican law against pre-employment discrimination. Mexican law reaches discrimination only where there is an existing employment relationship.").

84. *Id.* ("Mexico has perhaps addressed the illegality of pre-hire pregnancy discrimination through a new federal anti-discrimination law that came in to effect on June 12, 2003. Article IV of the antidiscrimination law arguably makes pre-hire pregnancy discrimination illegal, as it excludes women based on pregnant status.").

85. See generally Williams, *supra* note 81.

86. Grimm, *supra* note 14, at 202.

87. Goergen, *supra* note 10, at 412.

88. *Id.*

89. *Constitucion Politica de los Estados Unidos Meixcanos [Const.], as amended*, Diario Oficial de la Federacion [D.O.], art. 1, 13 de Noviembre de 2007 (Mex).

90. Goergen, *supra* note 10, at 415.

prohibition against discrimination in article one, the Constitution seemingly grants women the right to work.⁹¹

The Mexican Federal Labor Law also grants women the right to work and suggests that women are to be protected from gender discrimination.⁹² The law says that "No individual may be prevented from engaging in the professional, industrial, or commercial pursuit or occupation of her choice, so long as it is lawful," and that "citizens have the right to be free from distinctions between workers based on sex."⁹³

The Mexican government also passed the Federal Law to Prevent and Eliminate Discrimination in 2003.⁹⁴ While the name of the law suggests a sweeping prohibition of sex discrimination, it is actually quite narrow in scope. The Federal Law to Prevent and Eliminate Discrimination does not provide for civil liability against discriminators or the companies that employ them.⁹⁵ Instead this law charges the Mexican government to eradicate discrimination within its own government agencies,⁹⁶ but the Mexican government has been sluggish even to monitor discrimination within itself, so hope for eradicating discrimination within the private sector seems even less likely to occur.

Other Federal sexual harassment laws are not addressed in civil labor codes but rather in the Mexican penal law.⁹⁷ But the penal code defines sexual harassment narrowly and there is no recourse in civil courts and thus no way for a victim to recover monetary damages.⁹⁸ Instead, sexual harassment can result in a fine equivalent to forty days worth of wages, but that fine goes to the Mexican government, not to victims.⁹⁹ Finally, there is no requirement for training or education within companies who have engaged in sexual harassment.¹⁰⁰

In terms of protection for pregnant workers, Mexico has passed laws that require extensive pregnancy benefits and accommodations for female workers. Pregnancy is not a justified cause for dismissal and it is impermissible for an employer to try to coerce a woman in to leaving voluntarily.¹⁰¹ If a woman is fired because she is pregnant, she has a cause of action under the Federal Labor Law.¹⁰² But pre-hire pregnancy

91. *Id.* at 424; *Constitucion Politico de los Estados Unidos Mexicanos*, as amended, *Diario Oficial de la Federacion* [D.O.], art. 5, 13 Noviembre de 2007 (Mex.).

92. *Id.* at 422.

93. *Ley Federal de Trabajo*, as amended, art 3-4, *Diario Oficial de la Federacion* [D.O.], 27 de Noviembre de 2007 (Mex.).

94. Goergen, *supra* note 10 at 422.

95. *Id.*

96. *Id.*

97. Speas, *supra* note 12, at 89.

98. *Id.*

99. *Id.*

100. *Id.*

101. Goergen, *supra* note 10, at 431; ROGER BLANPAIN ET. AL., *THE GLOBAL WORK-PLACE: INTERNATIONAL AND COMPARATIVE EMPLOYMENT LAW—CASES AND MATERIALS*, at 210 (Cambridge University Press 2007).

102. Goergen, *supra* note 10, at 431-32.

screening is not prohibited under Mexican law.¹⁰³

While Mexico has provided some legal protection for female workers, the laws are not strict and are not properly enforced.¹⁰⁴ Despite the passage of these laws, Mexico remains in breach of its obligations under human rights laws as well as international and regional systems.¹⁰⁵

B. REGIONAL HUMAN RIGHTS SYSTEMS

Mexico is a member of the Organization of American States (OAS), which is a regional human rights system with inter-American treaties that prohibit discrimination and provide methods for protecting female workers.¹⁰⁶ Under the Organization of American States, Mexico has signed the American Declaration on the Rights and Duties of Man, the American Convention on Human Rights, and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women.¹⁰⁷

The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women is especially applicable to sex discrimination. The Convention includes a number of articles that cover sexual harassment and discrimination against women in the workforce.¹⁰⁸ The Convention declares that every woman has the right to be free from violence, which includes discrimination and sexual harassment.¹⁰⁹ Parties to the convention must report to the Inter-American Commission of Women, giving them information regarding the measures states have adopted to prevent and prohibit violence against women in their own countries.¹¹⁰

Though Mexico is a dualist country that requires implementing legislation in order to bring international and regional agreements within the sphere of domestic law, it is presumed that treaties are intended be effective immediately under the good faith principle of the Vienna Convention on the Law of Treaties.¹¹¹ Based on Mexico's inaction in preventing sex discrimination, the Inter-American Convention may have grounds to find it has not taken good faith measures to ensure the effectiveness of signed agreements.¹¹²

The Inter-American Convention has specific means to monitor and

103. Faber, *supra* note 83, at 307.

104. Amnesty Int'l, *Mexico: Briefing to the Committee on the Elimination of Discrimination against Women*, AI Index AMR 41/031/2006, June 1, 2006.

105. Goergen, *supra* note 10, at 416.

106. *Id.* at 417.

107. *Id.*

108. Brian D. Tittenmore, *Ending Impunity in the Americas: The Role of the Inter-American Human Rights System in Advancing Accountability for Serious Crimes Under International Law*, 12 Sw. J. L. & TRADE AM. 429, 434 (2006).

109. Wagner, *supra* note 2, at 357.

110. *Id.* at 358.

111. Vienna Convention on the Law of Treaties, Article 31(1), May 23, 1969, 1155 U.N.T.S. 340.

112. Goergen *supra* note 10, at 418.

correct human rights violations within member countries.¹¹³ The Convention can investigate individual instances of human rights violations, conduct investigations, advise member states, order hearings on both individual and general human rights issues, and even bring litigation before the Inter-American Court of Human Rights.¹¹⁴ The Convention has conducted several investigations regarding labor rights concerns, but as of yet there have been no instances where issues of Mexican sex discrimination have come up before the committee. Mexico is not required to report to the committee itself, rather the Convention must take initiative to conduct investigations either on its own or on the advice of concerned groups or citizens.¹¹⁵

C. INTERNATIONAL HUMAN RIGHTS SYSTEMS

Mexico is a signatory to several international treaties that recognize the right of a woman to be free from discrimination based on sex.¹¹⁶ As such, Mexico is under an obligation to protect women, provide them with meaningful remedies, investigate alleged discrimination, and punish the persons who engage in discrimination.¹¹⁷

1. *The North American Free Trade Agreement and the North American Agreement on Labor Cooperation*

One major international treaty that Mexico is a part of is the well-known North American Free Trade Agreement (NAFTA). NAFTA was considered to be a breakthrough trade pact when it became operative in 1994 not only because it dispensed with barriers to free trade but also because it included side agreements that addressed environmental concerns and fair labor standards issues.¹¹⁸ When NAFTA was passed, workers in the United States were afraid that businesses would take all their jobs to Mexico, where it would be cheaper to run a factory and where lower wages could be paid.¹¹⁹ In response to these concerns the North American Agreement on Labor Cooperation (NAALC) was enacted along with NAFTA.¹²⁰ The NAALC agreement was the first international trade agreement in which the United States had included labor

113. *Id.* at 417.

114. Tittenmore, *supra* note 108 at 435.

115. *Id.* at 433.

116. Goergen *supra* note 10, at 416. These treaties include but are not limited to the North American Free Trade Agreement (NAFTA), the North American Agreement on Labor Cooperation (NAALC), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the International Covenant on Civil and Political Rights (ICCPR).

117. Human Rights Watch, *supra* note 72; Goergen, *supra* note 10, at 416.

118. Grimm, *supra* note 14, at 180.

119. Goergen, *supra* note 10, at 410.

120. North American Agreement on Labor Cooperation (NAALC), U.S.-Can.-Mex., Sept. 13, 1993, 32 I.L.M. 1449 (1993) (hereinafter NAALC); Grimm, *supra* note 14, at 180.

agreements.¹²¹ It was intended to fight employment discrimination.¹²² But NAALC places obligations only on signatory nations, not on the private parties that operate within those nations.¹²³

NAALC includes eleven labor rights provisions that are meant to ensure minimum labor standards.¹²⁴ The eleven rights are divided into three groups, with the first group receiving the most protection, the second group receiving less, and the third group receiving the minimum level of protection.¹²⁵ Elimination of employment discrimination and equal pay provisions are in the second tier; only violations of the three rights in the first tier warrant sanctions against a violating member country.¹²⁶ Violation of any of the other eight rights, which include discrimination in employment, can only be remedied by international negotiation.¹²⁷

Furthermore, NAALC does not provide for uniform standards across all three member states.¹²⁸ The parties to NAFTA did not want to concede sovereignty as a part of the treaty, thus instead of imposing uniform laws on all three countries, the agreement only requires member states to enforce domestic labor laws.¹²⁹ The protections included in NAALC are essentially worthless without strong implementing legislation that establishes labor laws in line with the eleven guarantees set forth in the agreement.¹³⁰ A violation of NAALC only occurs when the domestic labor laws of a member state are violated.¹³¹ Since Mexico does not have strong implementing labor laws, sex discrimination is unlikely to be seen as a violation of the NAALC agreement. Additionally, NAALC places obligations only on signatory nations, not on the private parties that operate within those nations.¹³²

121. *E.g.*, Goergen, *supra* note 10, at 411; Grimm, *supra* note 14, at 180.

122. *E.g.*, Phillip DeHart, *The NAALC and Mexico's Ley Federal Para Prevenir y Eliminar La Discriminación: Further Failure Under a Flawed Treaty or the Beginning of a Meaningful Protection from Employment Discrimination Throughout North America?*, 34 GA. J. INT'L & COMP. L. 657,662 (2006); Faber, *supra* note 89, at 303.

123. *Id.*

124. NAALC, *supra* note 120; Goergen, *supra* note 10, at 411. ("Member states were concerned that the NAALC would erode their sovereignty to set labor standards, so they refused to adopt universal labor standards. Therefore, the agreement does not set a minimum standard for those rights, but instead requires member states to enforce their own domestic labor laws.").

125. NAALC, *supra* note 120.

126. Hannah L. Meils, *A Lesson from NAFTA: Can the FTAA Function as a Tool for Improvement in the Lives of Working Women?*, 78 IND. L. J. 877, 893 (2003).

127. *Id.*

128. *Id.* at 892.

129. NAALC, *supra* note 120; Goergen, *supra* note 10, at 411; Arriola, *supra* note 30, at 624.

130. Miels, *supra* note 126.

131. DeHart, *supra* note 122, at 663.

132. *Id.*

2. *Convention on the Elimination of all Forms of Discrimination Against Women*

The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) is another agreement that Mexico has signed in order to protect female workers. This treaty has designated a specific body to monitor and review compliance with gender-based discrimination prohibitions.¹³³ These are well respected panels within the international community, and could thus be a possible powerful tool to compel Mexico to ensure women's rights.¹³⁴

The text of the CEDAW does not explicitly prohibit sexual harassment, but there has been a recommendation from the committee that oversees treaty implementation stating that all parties to the convention must protect the right of all people to be free from "cruel, inhuman, or degrading punishment or treatment."¹³⁵ The same recommendation defines gender based violence as a form of discrimination and includes violence toward women based on gender, or violence that "affects women disproportionately."¹³⁶ The recommendation also provides guidance regarding the proper treatment of women in the workplace and calls on the signatory states to ensure that laws are passed to protect women and provide for their dignity and respect.¹³⁷ The recommendation advises that states provide education and engage in public information programs to help overcome traditional ideas about women's inferiority.¹³⁸

3. *International Covenant on Civil and Political Rights*

Mexico is also a signatory to the International Covenant on Civil and Political Rights (ICCPR). The ICCPR also has a monitoring body for gender discrimination compliance.¹³⁹ The ICCPR does not specifically address employment issues for women, but prohibits discrimination and guarantees equal and effective protection on any ground, including sex.¹⁴⁰

Mexico's domestic laws and practices do not keep the nation in compliance with its commitments to human rights in regional or international treaties.¹⁴¹ In order to meet compliance standards, Mexico needs to take a more proactive role in providing protections for the basic rights of

133. Goergen, *supra* note 10, at 417.

134. *Id.*

135. American Declaration on the Rights and Duties of Man, adopted by the Ninth International Conference of American States, art 5, Bogota, Colombia March 30-May 2, 1948.

136. Comm. On the Elimination of Discrimination Against Women, Gen. Recommendation No. 19, *Violence Against Women*, U.N. Doc A/47/38 (11th Sess., 1992) at ¶ 1.

137. *Id.*

138. *Id.* at ¶ 24(f).

139. Goergen, *supra* note 10, at 417.

140. Williams, *supra* note 81, at 142.

141. *Id.* at 425.

women.¹⁴²

VIII. WHAT SHOULD BE DONE?

There are several options available to create and enforce laws in Mexico that would protect women workers in maquiladoras, but most are complex and include numerous obstacles.

A. USE INTERNATIONAL HUMAN RIGHTS TREATIES

International Human Rights treaties can be useful tools in bringing women's rights to the forefront of the global community. Most international human rights agreements include provisions for fair treatment of women, and the high visibility of these international entities means a better chance at proper enforcement and greater publicity. At the same time, international enforcement can be highly time consuming and complex, and as a result it is not always entirely effective. Two of the international human rights treaties are particularly relevant: The CEDAW and the ICCPR.

1. *File a Complaint with the CEDAW Committee*

As a signatory to the Convention on the Elimination of all Forms of Discrimination Against Women, Mexico has recognized the competence of the Committee on the Elimination of Discrimination Against Women, the body that monitors compliance with the Convention and hears complaints from individuals or groups within the member states.¹⁴³ A case should be brought to this committee that alleges the failure of the Mexican government to comply with the terms of the agreement.¹⁴⁴ There is ample evidence of non-compliance; there have been well documented studies done by the Mexican government and International Governmental Organizations.¹⁴⁵ An individual could bring a case herself, or major international human rights groups could choose to bring a case. It would likely be more effective if an international human rights group brought the case because of the extraordinary amount of time and capital it takes to effectively litigate a discrimination case on the international level.

The Committee has actually already issued recommendations to Mexico regarding the treatment of women in the workplace.¹⁴⁶ Such recommendations have included revisions to the Mexican Labor Law, prohibition of pregnancy testing, and ensuring equal remuneration for men and women in the workplace.¹⁴⁷ While Mexico has repeatedly claimed that the legislature is considering such measures, it has yet to

142. *Id.* at 425.

143. *Id.* at 434.

144. *Id.*

145. *Id.* at 434.

146. Williams, *supra* note 81, at 434.

147. *Id.* at 435.

take any clear action to do so.¹⁴⁸

2. *File a Complaint under the ICCPR*

As a member of the United Nations, Mexico ratified the Optional Protocol which allows the United Nations Human Rights Committee to "receive and consider communications from individual subject to its jurisdiction who claim to be victims of a violation by a State Party of any of the rights set forth in the ICCPR."¹⁴⁹ The United States could complain that Mexico is not properly protecting the rights of women, or a Mexican woman could bring her own compelling case to the committee.¹⁵⁰ This strategy could be highly effective to establish a precedent for women to use international human rights treaties to garner basic protections. If one woman is able to make a case, she could set an example for others and help establish a framework for women around the globe to have their problems heard. As a practical matter, one successful case could provide precedent and would allow other women to format their claims in a manner that is most likely to result in success.

B. USE REGIONAL HUMAN RIGHTS TREATIES

Regional Human Rights Treaties offer an incentive because the localized nature of the enforcement means a greater chance at a speedy resolution. But since these regional agreements are not as high profile as some of their international counterparts, there is often not as much political pressure for compliance and adherence.

1. *File a Complaint with the Inter-American Commission on the Prevention, Punishment, and Eradication of Violence Against Women through the Organization of American States*

The Inter-American Commission can investigate human rights violations through a petition system.¹⁵¹ Members of the Organization of American States (OAS), OAS political organs, and individuals themselves can make the petition to initiate an investigation, or the Commission can begin an investigation on its own initiative.¹⁵² The Commission is better suited to investigate than the Mexican government, because there are no political or economic consequences for the Commission if their investigation reveals information that casts the Mexican government in an unfavorable light.¹⁵³ Further, an investigation by the Commission might increase international pressure on Mexico to amend and enforce laws to protect women's rights. Finally, greater publicity from a regional

148. *Id.*

149. *Id.*

150. *Id.*

151. Tittenmore, *supra* note 108, at 435.

152. Goergen, *supra* note 10, at 436.

153. *Id.*

body may alert women to some of their rights and better educate them on possible remedies.¹⁵⁴

After the Commission considers a case of discrimination, it can refer the case to the Inter-American Court of Human Rights.¹⁵⁵ This court has a good track record of gaining respect and compliance from Member States involved and provides a particular benefit because it recognizes both pecuniary and non-pecuniary damages.¹⁵⁶ Damages would compensate victims and provide a deterrent method for corporations engaged in sexual harassment and other maltreatment of female employees.¹⁵⁷

A claim before the court should allege violations of the American Convention on Human Rights and the Protocol of San Salvador. Mexico has violated the Convention by allowing sexual harassment in factories and thus denies women of the full exercise of their recognized right to humane treatment.¹⁵⁸ Mexico has not taken the required positive action to prevent violations of the rights and freedoms recognized under the convention.¹⁵⁹ The Mexican government has also failed to investigate claims of discrimination in violation of the San Salvador Protocol.¹⁶⁰

2. *File a Complaint under NAALC with the United States or Canada*

Parties can file a complaint under NAALC if a member country has disregarded or failed to enforce its domestic laws in violation of the NAALC agreement. If NAALC heard a complaint about the treatment of women in Mexican maquiladoras, there would be valuable information gathering concerning sex discrimination in Mexico and the government's response.¹⁶¹ NAALC's enforcement agencies operate through the National Administrative Offices (NAOs).¹⁶² As a part of NAALC, each nation must develop its own NAO that investigates violations on its own initiative or in response to complaints.¹⁶³ In the event of a formal complaint, the National Administrative Offices would consult with the parties involved in the complaint and seek to find a solution that would address the concerns of each party.¹⁶⁴

If the NAO consultation did not result in satisfactory compliance, the Evaluation Committee of Experts might be called to write a report reviewing Mexican discrimination laws.¹⁶⁵ In the formulation of this report, the Committee could consider input from a wide range of sources; it could consider documentation of sexual harassment, impacts of sexual

154. *Id.*

155. Tittenmore, *supra* note 108, at 437.

156. Goergen, *supra* note 10, at 437.

157. *Id.*

158. *Id.*

159. *Id.* at 438.

160. *Id.*

161. *Id.* at 440.

162. *Id.*

163. Grimm, *supra* note 14, at 195.

164. Goergen, *supra* note 10, at 440.

165. *Id.*

harassment, and evidence that there has not been a proper governmental response.¹⁶⁶ Upon consideration of all these factors, the committee could draft a report with a recommendation and the parties to the complaint would be required to submit a response.¹⁶⁷

There have been some successful cases before the U.S. NAO regarding maquiladora worker treatment.¹⁶⁸ One such case involved the dismissal of maquiladora workers who attempted to organize and join unions in a General Motors/Honeywell plant.¹⁶⁹ The workers accepted severance pay, which prevented the NAO from finding that Mexico failed to enforce labor laws in violation of the NAALC.¹⁷⁰ The NAO did find that Mexican authorities used questionable labor practices, but refrained from making a formal finding or requiring further action.¹⁷¹ If other women who suffered maltreatment in maquiladoras brought a similar case but did not accept severance pay, they would be likely to get a favorable ruling from the NAO.

Another case in a Sony affiliate plant dealt with the same sorts of issues: workers were intimidated when they tried to form a union and Mexican police were involved in a violent effort to suppress employees and stop a demonstration.¹⁷² In this case, the U.S. NAO found that the problems were serious enough to require a Ministerial Consultation, a process that forces member countries to divulge further information and suggests changes to remedy a member state's failure under the treaty.¹⁷³

Another case under NAALC dealt specifically with discrimination against female workers.¹⁷⁴ A women's advocacy group filed a complaint that alleged maquiladora managers required women to take pregnancy tests, physical exams, and answer personal questions about sexual activity.¹⁷⁵ The managers refused to hire pregnant women and tried to coerce women who became pregnant after being hired to quit by giving them intense physical labor assignments and requiring mandatory unpaid overtime.¹⁷⁶ The U.S. NAO found that this treatment violated Mexican labor laws and that the Mexican government provided inadequate reporting procedures for women who had suffered discrimination.¹⁷⁷ This particu-

166. *Id.*

167. *Id.*

168. Betty Southard Murphy, *NAFTA's North American Agreement on Labor Cooperation: The Present and the Future*, Conn. J. Int'l L. 403, 415 (1995); Grimm, *supra* note 14, at 211.

169. Grimm, *supra* note 14, at 212.

170. *Id.* at 212-13.

171. U.S. National Administrative Office, Public Report or Review, NAO Submission #94001 and NAO Submission #94002, at 29 (Bureau of International Labor Affairs, U.S. Dept. of Labor, Oct. 12, 1994).

172. See U.S. National Administrative Office, Report on Ministerial Consultations on Submission #94003 Under the North American Agreement on Labor Cooperation, at 1 (Bureau of Internal Labor Affairs, U.S. Dept. of Labor, June 4, 1996).

173. *Id.*

174. Grimm, *supra* note 14, at 219.

175. *Id.*

176. *Id.*

177. *Id.* at 220.

lar decision is significant because it shows that the U.S. NAO is responsive to women's issues. Since this proceeding, however, Mexico has failed to take adequate corrective action, and similar issues continue to arise.

The continued instigation of this process is important because it will produce data and statistics regarding the status of sexual harassment in Mexican workplaces and garner international attention to the issue.¹⁷⁸ Publicity about the problem of discrimination against female workers would likely provide additional support to the equality movement and pressure the Mexican government to make appropriate changes.

Despite the potential posed by the NAALC, it has inherent limits that may impede progress in gaining protection of women's rights. The lack of enforcement options suggests that the signatory nations to NAALC did not consider the prevention of sex discrimination to be a top priority.¹⁷⁹ Additionally, NAALC does not impose universal standards or harmonizing measures in the agreement, nor is there a supranational tribunal to hear employment disputes.¹⁸⁰ Another weakness of NAALC is that it cannot issue binding resolutions or require that damages be paid.¹⁸¹ The only available remedies are either a Ministerial Consultation or referral to an Evaluation Committee of Expert Enforcement.¹⁸² Both of these options require further communication between the signatory and the NAO, but no binding result is ever ordered.

Finally, under the NAALC there may be no cause of action at all for women who suffered sex discrimination because the agreement provides for hearings based on violations of state labor laws.¹⁸³ Mexico's prohibitions against discrimination are found in its penal code, not in its labor laws.¹⁸⁴ So if NAALC bodies decide to interpret the agreement strictly, they may find that they are unable to hear a claim based out of the Mexican penal code.

C. OTHER STRATEGIES

1. Education and Advocacy

Article three of the Mexican Constitution provides that "every individual has the right to an education."¹⁸⁵ Thus, Mexican women are entitled to an education that will inform them about their rights under applicable labor laws.¹⁸⁶ Today, most women in Mexico are not aware of their rights, and employers treat them unfairly without consequences.¹⁸⁷ In a survey of 160 women employees, twenty-eight percent were unfamiliar

178. Goergen, *supra* note 10, at 440.

179. Grimm, *supra* note 14, at 198.

180. *E.g., id.*; Goergen, *supra* note 10, at 439.

181. Goergen, *supra* note 10, at 439.

182. Grimm, *supra* note 14, at 198.

183. Goergen, *supra* note 10, at 439-40.

184. *Id.*

185. *Id.* at 441.

186. *Id.*

187. *Id.* at 441-42.

with the concept of sexual harassment, and fifty-three percent were unaware of any laws protecting them from discrimination.¹⁸⁸ Educating women will encourage them to file complaints when they experience discrimination, like pregnancy testing or discrimination once they become pregnant.¹⁸⁹ Education will also encourage women to speak out when they see others being treated badly because of their sex.¹⁹⁰ Advocacy groups, which are discussed below, can have an instrumental role in helping to provide and promote educational opportunities.

2. *Institute Corporate Codes of Conduct*

In addition to education, Mexican women could benefit with the institution of effective corporate codes of conduct. Since 1991 there have been standards of conduct in place at many Mexican maquiladoras.¹⁹¹ These standards of conduct include twenty-nine concepts ranging from environmental concerns to employment health and safety issues.¹⁹² One of the standards explicitly states that U.S. corporations will take "positive steps to prevent sexual harassment."¹⁹³ But the current standards have not provided enough protection for workers in maquiladoras, nor has there been appropriate enforcement.¹⁹⁴

Corporate codes of conduct are problematic in some ways because companies are reluctant to disclose their compliance with the codes. So on top of developing stricter codes, there should be advocacy for records of implementation and enforcement to be kept, monitored, and reported.¹⁹⁵ Corporations should institute training for managers to inform them about sexual harassment and discrimination. Such training should include strategies on how to detect sexual discrimination, procedures for informing higher-ups, and suggested methods for dealing with employees who violate the codes of conduct.¹⁹⁶ Codes could also require the company to keep track of sex discrimination and possibly even report it to an independent monitoring agency.¹⁹⁷

3. *File Claims in the United States under the Alien Tort Statute*

A new and developing possibility has also been presented: filing a claim under the Alien Tort Statute in the United States.¹⁹⁸ Victims of sexual harassment and pregnancy discrimination in Mexico may be able to sue U.S. owned corporations for such offenses under claims of battery and assault, breach of covenant of good faith and fair dealing, and false

188. *Id.* at 442.

189. Goergen, *supra* note 10, at 442.

190. *Id.*

191. *Id.*

192. *Id.*

193. Speas, *supra* note 12, at 84.

194. Goergen, *supra* note 10, at 442.

195. *Id.* at 443.

196. *Id.*

197. *Id.*

198. *Id.*

imprisonment just to name a few.¹⁹⁹ While jurisdictional choice of law issues may present problems, a number of successful cases indicate that these kinds of suits could be a viable solution for women who have suffered discrimination.²⁰⁰

The Alien Tort Statute provides “original jurisdiction of a civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.”²⁰¹

A 1980 case, *Filartiga v. Pena-Irala* laid an important foundation for future alien tort claims under the Alien Tort Statute.²⁰² The second circuit ruled in that case that an alien citizen can obtain jurisdiction in a U.S. federal court to seek damages for torts by others in the non-citizen’s country.²⁰³ The court said such a claim is viable where “deliberate torture perpetuated under the color of official authority violates universally accepted norms of the international law of human rights, regardless of the nationality of the parties.”²⁰⁴

But in order for an allegation to be recognized under the statute, the allegation must meet the *jus cogens* test.²⁰⁵ In other words, the offense must violate a norm that is both prohibited and recognized by all nations.²⁰⁶ Examples of such offenses include, “genocide, slave trade, murder or causing the disappearance of individuals, torture. . .prolonged arbitrary detention, systematic racial discrimination, or a consistent pattern of gross violations of internationally recognized human rights.”²⁰⁷

As of yet, it is unclear whether a maquiladora worker can qualify to sue under these requirements, but extreme cases of discrimination have resulted in severe consequences for women in these factories, so there may be a cause of action depending on the circumstances.

4. *Involve Advocacy Organizations in the Empowerment of Women and Enforcement of Labor Laws*

Advocacy organizations and Non-Governmental Organizations can have a broad impact on women’s rights in maquiladoras. Labor rights advocates can provide hope for women suffering from discrimination.²⁰⁸ Advocates can use many avenues to disseminate their messages.

Advocates can increase publication of documents, flyers, and cards that provide short segments of information that can inform women of their

199. *Id.*

200. Goergen, *supra* note 10, at 443.

201. The Alien Tort Statute, 28 U.S.C. § 1350 (2010).

202. *Filartiga v. Pena-Irala*, 630 F.2d 876, 878 (2d Cir. 1980).

203. *Id.*

204. *Id.*

205. Arrieola, *supra* note 24, at 629.

206. *Id.*

207. *Id.*

208. Michelle Smith, *Potential Solutions to the Problem of Pregnancy Discrimination in Maquiladoras Operated by U.S. Employers in Mexico*, 13 BERKLEY WOMEN’S L. J. 195, 196 (1998).

rights in a way that is easy to understand.²⁰⁹ Women who are too busy to attend meetings between balancing work and home responsibilities can read this information and learn about their rights and possible avenues for redress.

Advocates can also take a more personal role in educating employees and employers.²¹⁰ NGOs can forge alliances with major corporations that run maquiladoras and offer their services in order to show managers what sexual harassment is and how to stop the practice of it in the work environment.²¹¹ If employers are not receptive to advocates' efforts, advocacy groups can set up meetings for employees off site to teach them how to identify discrimination and work toward a solution that will keep workers safe and preserve their jobs.²¹²

Advocates can also use their power to pressure governments and corporations to improve working conditions in maquiladoras.²¹³ Non-Governmental Organizations can send letters, meet with officials, and use the media to bring public attention to the poor business practices being tolerated within the maquiladoras.

Those who advocate for women's rights in the workplace can also play a crucial role in the formation and passage of international treaties binding national governments to protect women from discrimination. Once these treaties are passed, NGOs can be instrumental in information gathering and reporting. If advocates observe repeated breaches of the obligations set forth in treaties, they can use the grievance process to draw attention to the matter and involve the international community in remedying the problems.

One advocacy organization, the *Comite Fronterizeo de Obreras* (CFO), The Border Workers Committee, has demanded accountability for the abuse of employees at the hands of multinational corporations and helped working women to understand their rights and achieve equality.²¹⁴ Recently, CFO members have won labor board arbitrations and received settlements that have allowed them to leave maquiladora work behind and start small businesses on their own.²¹⁵

The success of CFO suggests that the involvement of advocacy organizations and NGOs can have real and substantial effects for women faced with discrimination in the work place. Once organizations are successful a handful of times, they will increase in strength and experience and have an even larger role to play in protecting the rights of women in maquiladoras.

209. *Id.*

210. *Id.*

211. *Id.*

212. *Id.*

213. *Id.*

214. Arriola, *supra* note 24, at 631.

215. *Id.* at 634.

5. *Hold Multi-National Corporations Accountable for Discrimination*

Multi-national corporations that benefit from free trade agreements like NAFTA should ensure that those benefits do not result in disproportionate harm to local workers.²¹⁶ Multi-national corporations have immense wealth and power, and many times they wield this power over foreign governments who need the economic opportunities these companies can provide. Leaders of these corporations should encourage governments to pass laws that protect workers and create a culture of accountability.²¹⁷ If corporations refuse to take responsibility for the events that happen in their factories, consumers can play a role in enforcing human rights by supporting only those companies who engage in fair and legal business practices.

6. *Amend Mexican Laws*

Other means to improve conditions for women in maquiladora include amending current domestic laws and ensuring better enforcement. This would be a massive political undertaking that would require a substantial commitment from all branches of the Mexican government. Perhaps the most important way to curtail discrimination in maquiladoras would be to provide civil causes of action for women who have suffered discrimination in employment. If multi-national corporations could be held financially liable for their failure to protect women, they would certainly have an incentive to provide sensitivity training to employees. The threat of punitive damages would be more likely to convince corporations to be more proactive in preventing sex discrimination.

As part of enforcement, the Mexican government should consider creating a task force that collects data and statistics about discrimination against women in maquiladoras. The task force should report back to the Mexican government with information about violations, and the government could prosecute maquiladoras under current criminal laws prohibiting discrimination. But because the penalties under these laws are relatively light, the Mexican legislature should consider amending these laws to provide more deterrence against violating these statutes.

The Mexican government may be reluctant to take these steps because of the economic impact the maquiladoras have on the country as a whole. Complex issues arise when attempting to balance what the Mexican government perceives as necessary economic stimulus with the health and safety of female workers. But from a human rights perspective, it is clear that the Mexican government should put its citizens' rights before its economic interests in attracting business from multinational corporations.

Although there would be many obstacles to achieving better legislation for women, the effective passage of better labor and discrimination laws,

216. *Id.* at 636.

217. *Id.*

including causes of action for civil cases, would allow for greater protection for women in the workplace.

IX. CONCLUSION

Mexico is unquestionably failing to protect women's basic human rights by allowing reprehensible conduct to continue in maquiladoras. Women's traditional political and social roles have prevented them from garnering any significant political or social influence that would enable them to make the necessary changes to protect their interests. Despite their emergence in the job market, the stigma remains that they belong in the home and should exhibit characteristics of docility and cooperation.

Without support from the Mexican government, women have been repeatedly exposed to maltreatment at the hands of their employers. Maquiladora workers endure sexual harassment and pregnancy discrimination, and are often too dependent on wages to risk advocating for better treatment or working conditions. As a result, women are consistently abused and forced to work in unsafe and unpleasant environments.

Mexico has not provided its women with a means to prosecute the individuals or the corporations that perpetuate sex discrimination in the workplace. The country's domestic laws do not provide an adequate remedy because they are not well drafted or meaningfully enforced. Additionally, the current lack of civil remedies means that women can never sue for monetary relief and that punitive damages cannot be used a deterrent for multinational corporations.

The maltreatment of women in maquiladoras clearly establishes that Mexico is in violation of the treaties to which it is a signatory. Both regional agreements, like the Organization of American States, and international agreements, like NAFTA, the Convention on the Elimination of all Forms of Discrimination Against Women, and the International Covenant on Civil and Political Rights, require that women's labor and human rights be respected. If legitimate complaints were lodged against the Mexican government, the reviewing committees established by these treaties would likely resolve the matter in favor of the victims of sex discrimination.

In addition to filing complaints under international and regional treaties, women in Mexico should also attempt to sue in the United States under the Alien Tort Statute and align themselves with nongovernmental organizations that will pressure the Mexican government to amend laws, lobby corporations to create and enforce codes of conduct, and encourage overall education and advocacy, about sex discrimination in maquiladoras.

Once sex discrimination is eradicated, the lives of Mexican women will improve. Corporations that own maquiladoras will improve their global image and likely benefit from better employee morale. Finally, Mexico will be able to come in to compliance with major treaties and gain legiti-

macy in the international community. Thus, ensuring equal rights for women in the workplace can truly benefit all parties involved.

